



Indie Information Sheet for New BBC Radio Commissions

The purpose of these notes is to act as a general source of information, services and procedures you will need to be aware of from early to final stages of production, as well as for post production, for BBC Radio & Music. It contains a summary of main features and contact details of where to get more information.

Please ensure that all relevant members of your company working on the programme receive this information.

1. Getting Started

The **BBC's Commissioning Website** [<http://www.bbc.co.uk/commissioning/radio/network/index.shtml>] provides most of the information you will need to know in relation to producing and delivering your programme in accordance with the BBC's requirements. The website, together with your production agreement and the information set out in these notes should provide the answer to most questions you will have. For any further assistance, or if you are being commissioned to produce solely either interactive material or an event, please contact either the relevant BBC contact who you are working with or Susan Binney.

2. Your Agreement

Your agreement with the BBC will comprise the BBC's General Terms for the Production of Radio Programmes by Independents together with the two programme specific schedules, the **Special Terms**, and the **Commissioning Specification**. These documents are available on the Business Affairs section of the Commissioning Website [<http://www.bbc.co.uk/commissioning/radio/network/busaffairs.shtml>] as well as in a printed booklet, a copy of which is available from Gerardina Carbone in Business Affairs. The schedules alone will be attached to the hard copy of the agreement; the General Terms are incorporated by reference and will not be sent out with every contract.

The Special Terms and Commissioning Specification will be completed by Business Affairs, based upon the information supplied by you on RAP. Upon receipt of details of the agreed commission and budget from Independent Supplier Management, Business Affairs will generate and send signature copies of the commissioning agreement.

It will help us greatly to speed up the contracting process if all the relevant information for the Commissioning Specification is on RAP. In particular, the information requested for the Rights section on RAP is crucial for completion of your commissioning agreement. More detail on this is set out below but you should ensure that you confirm in that section that you have met or can meet the BBC's minimum clearance requirements or else set out any restrictions.

3. Health and Safety and Risk Management

Health and Safety are essential factors for you to consider on your production. Details of the BBC's policies and requirements with regard to Health and Safety are set out in the Compliance section of the BBC website [here](http://www.bbc.co.uk/commissioning/radio/network/compliance.shtml) [<http://www.bbc.co.uk/commissioning/radio/network/compliance.shtml>].

All independent suppliers have or will be asked to complete a Health and Safety Questionnaire, for approval by BBC Occupational Risk Management. For companies of 5 employees or more, we will need to see a copy of your written Health and Safety policy (which is a legal requirement for companies of this size in any event). For smaller companies, some of the questions may seem to have larger companies in mind, but even if the questions seem to you to be irrelevant, it is important that you answer every question. Unanswered questions or questions answered "not applicable" will result in the questionnaire being rejected, as we will have no true picture of your understanding of your health and safety obligations. If you do not at the moment or have no plans to undertake the kind of activity mentioned, then say so, rather than write "n/a". Even small companies need to have an awareness of health and safety law and have processes in place for assessing and dealing with risk, but such processes need to be appropriate to the size and risk profile of the productions you are responsible for. We do not expect you to have standard risk assessments in place covering erection of scaffolding or pyrotechnics unless you are in the business of producing, for example, live music events where these may be used.

If you are a small company of two directors, in many cases the answers to our questions may be simply that you or your co-directors are responsible for health and safety policy, listing any training you have had, and that you have access to the appropriate sources of advice if needed.

If you have difficulties in completing the form then you can contact RIG for advice.

4. Insurance

It is your responsibility to ensure that the production is properly insured against day to day production risks (accidents, damage to equipment, etc), as these are your risks as producer. If the BBC considers that there are certain risks inherent



in a production that must be insured – for example, insurance against the unavailability of a key artist, or insurance against bad weather for an outside event – then we will discuss this with you as part of the budgeting process and the requirement for that insurance will be set out in the Special Terms.

The general terms (Clause 8.1.1.2) also refer specifically to “errors and omissions” insurance, which is (in simple terms) insurance against defamation or breach of copyright claims. The BBC has its own errors and omissions policy, which covers our broadcast of the programme, as long as you have complied with the warranties in Clause 17 of the General Terms (amongst others, that you have contracted and cleared the relevant rights, and checked the programme for defamation). However, if there have been errors in clearing or checking, then our policy will not apply. Therefore for high risk programmes, we may require the security of a separate errors and omissions policy to be taken out by you. In this case we will discuss this with you and it will be reflected in the budget and set out in Clause 7 of the Special Terms. Errors and Omissions insurance is obtainable from the insurance market - the BBC is not able to discriminate by recommending particular brokers.

5. Clearances

The BBC expects contributors to be contracted in accordance with normal practice for independent producers. Where the BBC has union or collective agreements for certain contributors (for example writers, actors, musicians, authors and publishers) then we will not oblige you to obtain pre-paid rights greater than the BBC does under these agreements. Summaries of the pre-paid rights and the repeat fee structures of those agreements are available on this website so that these can be reflected in your individual contributor agreements.

Your production agreement (General Term 6 and Special Term 3.2) will make it clear which the BBC uses need to be pre-paid within the licence fee and which the BBC uses should be clearable subject to further payment. An example of the kind of wording used in Special Term 3.2 is available on the Business Affairs website. You should establish that it is possible to get these rights and what they cost, even if under the terms of your production agreement you are not required to pay for them straight away.

At the minimum for analogue networks, the BBC will require that two network transmissions and Primary New Media rights are pre-paid. Primary New Media rights comprise streaming, seven day audio on demand, seven day new media rights and new media extract rights. Full definitions of these can be found in the General Terms. From July 2006, for literary contributions which would be covered by the BBC/ Publishers’ Association or the BBC/ Writers’ Guild agreements (such as dramas and readings) then the minimum clearance requirement for the writer(s) will also include repeats on the digital networks for a period of five years from first broadcast.

For certain types of contributor we will expect that all rights are pre-paid unless otherwise agreed – for example, presenters, panellists, interviewers, narrators, voiceovers, producers, directors, and locations or venues. It is the BBC’s practice to obtain buy-outs from these types of contributors; we do recognise that extraordinary factors sometimes make this impossible. We also expect archive material to be pre-paid for unlimited transmissions over the BBC’s licence period (Clause 6.2 of the General Terms). If you anticipate that there are issues that will make a buy-out difficult in these cases, then let us know as soon as possible, ideally when making the proposal on RAP. We will then be able to take this into account in the commissioning and budgeting process.

It is easy to be confused between the transmissions the BBC obtains pre-paid from you as the independent, and the transmissions you obtain pre-paid from contributors. The BBC obtains from you the Tier A and Tier B packages (Clause 15 of the General Terms), and pays repeat fees only when these are exhausted. But we acknowledge that you may have obtained 2 network transmissions from contributors and therefore we will be paying repeat fees to contributors where none are yet due to you. We are not expecting you to obtain the Tier A and Tier B packages pre-paid from contributors where the BBC’s inhouse agreements provide for 2 transmissions and Primary New Media rights only to be pre-paid.

If you have any queries in relation to clearances please refer in the first instance to Business Affairs.

6. Contributors, Key Agreements and other Third Party Agreements

You will need to enter into a number of contracts with a variety of contributors/third parties depending on the needs of your production. If you have any questions regarding third party contracts, or if you think BBC Business Affairs can help in any way during the production period, please contact them as early on as possible. The BBC has some standard forms for certain contributors (actors, musicians, interviewees, presenters, composers) that can be e-mailed to you if you wish.

As mentioned in paragraph 5 above, unless otherwise stated in the Special Term 3 of your Production Agreement, you need to contract all contributors for your programme in accordance with Clause 6 of the General Terms. As your contributor contracts are expected to meet these requirements, the BBC does not need to specifically approve each contract (unless it is a Key Agreement – see below). Please note though, that any variation to the provisions set out in General Term 6 or Special Term 3 could only be made with BBC consent.

The only exception to this is where the BBC has indicated in paragraph 3 of the Commissioning Specification that it requires prior approval of any “Key Agreements” (as distinct from approving the identity of the person). For these, you



would need to secure BBC consent to the proposed agreement terms and/or fee *before* signing them. In giving its approval, the BBC will only be commenting on issues affecting the BBC (for example additional payments such as repeats and entitlements to net, compliance with BBC policies, and any reserved rights that may undermine the General Terms) and not on any other aspects that may affect you, but not the BBC. Please note that approval of a draft agreement by Business Affairs does not imply approval of any proposed credit (such approval is an editorial matter). Please let the BBC have an early draft of these agreements, so that any BBC comments can be incorporated at the early stage of negotiations.

It remains your responsibility to obtain independent legal advice with regard to all other aspects of your proposed third party agreements and their suitability with regard to the overall terms of the Programme Production Agreement between your company and the BBC, and your company's requirements generally.

7. Delivery

The BBC's delivery and technical requirements are set out in Clause 6 of the Commissioning Specification, and on the commissioning website. Our standard deliverables are listed in the blank Special Terms incorporating the Commissioning Specification on this website. The actual deliverables applying to your programme will be on the Commissioning Specification sent to you. In particular, we expect the interactive requirements listed to be available as standard. If we require some additional material over and above those listed in the standard Commissioning Specification to be delivered to support our BBCi website or other interactive offering, we'll discuss and agree this with you before the commissioning agreement is signed.

8. BBC Policies and Guidelines

It is vital that all programmes comply with the relevant statutory and regulatory provisions and relevant BBC policies including the BBC Editorial Guidelines. Details can be found here [<http://www.bbc.co.uk/commissioning/radio/network/compliance.shtml>]. If you have previously been commissioned by the BBC, please make sure that your staff are using the current versions of all these provided on the website as contacts and procedures may change from time to time.

If you are not sure of what policies or guidelines may apply or whether a particular programme issue falls in the realms of editorial policy, programme legal advice, business affairs or elsewhere, please contact Susan Binney or your Commissioning Editor.

9. Contact with the BBC's legal and rights departments

Relying on advice from the BBC:

Please note that it is your company's responsibility to ensure that the programme complies with all the legal requirements as set out in the General Terms. Nevertheless, the nature of your programme may mean that during production you come into contact with one (or more) of the BBC's internal legal or rights departments through your Commissioning Editor or Legal & Business Affairs Manager. Please note that any guidance or opinion given by such internal departments is for the BBC's own purposes and should not be taken to constitute legal advice to your company. Any reliance that you may choose to place on any such opinion or guidance shall not, unless specifically agreed in writing by the BBC, be deemed to waive your obligations or warranties under the terms of your programme production agreement.

Maintaining legal privilege:

Please also note that when legal advice is provided in connection with a programme, it is normally confidential and protected from having to be disclosed to third parties by what is known as 'legal advice privilege'. This 'privilege' is an important safeguard which may be unintentionally lost or waived in certain circumstances, including when the advice is communicated to someone who is not the lawyer's "client", unless certain measures are put in place.

In this case, the "client" of the relevant legal department is the BBC and, in most cases, advice will be provided direct to the BBC's commissioning executive or business affairs representative for the programme in question. However, it is recognised that, because of the nature of your commission from the BBC, you may share a common interest in the subject matter of such advice and it may be appropriate in certain circumstances for that advice to be shared with you or occasionally provided to you direct, even though you are not the client.

It is important therefore for the BBC to ensure that there is no waiver of legal advice privilege as a result of this. Accordingly, please note that any such advice which is shared with you or provided directly to you is done without waiving your obligations or warranties as mentioned above (unless agreed otherwise in writing) **and** is done on the following terms :

1. That any such advice is protected from disclosure by common interest privilege; and
2. That any such advice is provided in strict confidence and may not be disclosed to any third parties without the express written consent of the BBC.



10. Using clips of BBC programmes

If you want to use a clip in your programme taken from another BBC programme (made by the BBC or commissioned from another indie) you are entitled to do so set out in Clause 6.2 of the General Terms but please be aware that you will need to clear the underlying rights in the clip. The principal limitation is that any commercial use of the Programme including the BBC archive clip is subject to negotiation with the BBC of a reasonable commercial rate for its use.

11. Trade Marks

Under the provisions of your production agreement, certain distribution activities regarding the programme in the UK must carry the BBC logo (General Term 16.2.3). If you are licensing any of these rights to third parties you are required to ensure that they enter into a Trade Mark licence directly with the BBC for these purposes. Contact Business Affairs in the first place to arrange this.

The BBC's guidelines for use of the BBC logo on commercial products by you or your licensees are available at [\[http://www.bbc.co.uk/branding/guidelines/comm_guides.shtml\]](http://www.bbc.co.uk/branding/guidelines/comm_guides.shtml) and http://www.bbc.co.uk/info/policies/commercial_guides/. They are updated from time to time. We are developing guidelines for BBC branding to be used for commercial downloads (if approved by the BBC in accordance with Clause 12.9.2) which will be distributed when available.